

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
JUST A COUPLE OF DIFFERENT
GROUPS, BUT TO THE RIGHT I WOULD
LIKE TO WELCOME OUR TEACHERS
ATTENDING THE JUSTICE TEACHING
INSTITUTE THIS ENTIRE WEEK HERE
AT THE FLORIDA SUPREME COURT.
THERE ARE 25 TEACHERS FROM 18
SCHOOL DISTRICTS PARTICIPATING
IN THE INSTITUTE THIS WEEK.
AND THE INSTITUTE IS A WHOLE
WEEK LONG WHERE THEY VISIT AND
LEARN ABOUT STATE COURTS AND THE
APPELLATE PROCESS USING A CASE
STUDY APPROACH.
THE CASE WE'RE GOING TO HEAR
TODAY, THEY HAVE BEEN STUDYING
IT.
AND TO THE LEFT HERE, MY
UNDERSTANDING IS THAT WE HAVE
LEADERSHIP ST. PETERSBURG; IS
THAT CORRECT?
WELCOME ABOARD.
AND, COUNSEL, WITH THAT IN MIND,
YOU READY TO PROCEED?
IT'S THE CASE OF STATE OF
FLORIDA VERSUS CHRISTOPHER
MARCUS.
>> THANK YOU.
GOOD MORNING.
AND MAY IT PLEASE THE COURT, MY
NAME IS MATTHEW PAVESE AND I
REPRESENT THE STATE OF FLORIDA.
I WILL BE RESERVING FIVE MINUTES
FOR REBUTTAL.

A BRIEF OVERVIEW OF THE FACT IN THIS CASE.

DEFENDANT WAS SEEN ON A PUBLIC STREET SMOKES WHAT AN OFFICER BELIEVED TO BE A MARIJUANA CIGARETTE.

THE OFFICER ATTEMPTED TO APPROACH THE DEFENDANT AND INVESTIGATE THE SMOKING. THE DEFENDANT FLICKED THE MARIJUANA CIGARETTE UNDER THE CAR AND STARTS TO BACK AWAY. THE OFFICER MAKES REPEATED REQUESTS FOR THE DEFENDANT TO STOP SO HE CAN INVESTIGATE WHAT HE BELIEVES TO BE MARIJUANA SMOKING, AND THE DEFENDANT ULTIMATELY RUNS INTO A GARAGE. THE OFFICER AND ANOTHER OFFICER

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>> LET ME ASK YOU THIS BEFORE YOU GO TOO FAR ON THESE FACTS. YOU SAID HE RUNS INTO THE GARAGE.

WAS HE BACKING INTO THE GARAGE OR HAD HE TURNED AROUND AND STARTED -- BECAUSE I THOUGHT I UNDERSTOOD THAT HE WAS, YOU KNOW, BACKING AWAY FROM THE OFFICER AND BACKED INTO THE GARAGE.

IS THAT NOT THE CASE?

>> THERE WAS A DISPUTE FACTUALLY IN THIS CASE ABOUT WHETHER OR NOT-- AT LEAST AT THE SUPPRESSION HEARING, ABOUT WHETHER OR NOT HE HAD BACKED INTO IT OR IF HE HAD RUN INTO THE GARAGE, AND THE TRIAL COURT SIDED ON THE CREDIBILITY SIDE WITH THE STATE'S OFFICER THAT SAID HE RAN INTO THE GARAGE AND THE COURT OF APPEALS' OPINION ALSO APPEARS TO AGREE THAT HE RAN INTO THE GARAGE.

>> THE QUESTION OF HOT PURSUIT, WOULD IT MAKE ANY DIFFERENCE IF HE SLOWLY BACKED INTO THE GARAGE, OR WHETHER HE JUST BACKED AND RAN AWAY?

>> IT MADE NO DIFFERENCE, YOUR HONOR.

SANTANA, IT CAN BE A VERY BRIEF PURSUIT IN THE CASE OF SANTANA, WHICH OBVIOUSLY PETITIONER RELIES ON IN ITS BRIEF.

THERE THE PERSON WAS ON THE-- ONE STEP WOULD HAVE BEEN PUT THEM OUTSIDE THE DOOR, ONE STEP WOULD HAVE PUT THEM INSIDE THE DOOR.

THEY CALLED THAT A TRUE CASE OF HOT PURSUIT.

>> LET ME ASK YOU THIS.

AT THE POINT WHERE THE DEFENDANT STARTS BACKING AWAY OR RUNNING AWAY, WHICHEVER, FROM THE OFFICER, DID THE OFFICER HAVE PROBABLE CAUSE TO ARREST THE DEFENDANT?

>> YES, YOUR HONOR.

AND THAT WOULD BE BASED ON THE FACT THAT HE HAD WITNESSED HIM SMOKING WHAT HE BELIEVED TO BE A MARIJUANA CIGARETTE AND I THINK REALLY WHERE THE PROBABLE CAUSE WOULD COME IN IN THIS CASE WAS HE THEN GOT THE ODOR OF MARIJUANA AND HE WAS INVESTIGATING WHY HE THREW THAT UNDER THE CAR.

HE HAD PROBABLE CAUSE FOR THAT. WHEN HE ORDERED HIM TO STOP MULTIPLE TIMES AND THEN HE RUNS INTO THE GARAGE OR EVEN IF HE BACKED INTO THE GARAGE, HE ALSO HAS RESISTING AN OFFICER WITHOUT VIOLENCE.

>> NOW, JUST TO MAKE SURE I UNDERSTAND THIS, FROM WHERE THE OFFICER SAW THE DEFENDANT TO THE GARAGE OR THE REC ROOM, WE'RE TALKING ABOUT TEN FEET?

I MEAN WE'RE NOT TALKING ABOUT THIS WAS GOING TO BE A LONG CHASE FROM ONE PLACE TO ANOTHER, CORRECT?

>> YES, YOUR HONOR.

>> OKAY.

THE OTHER QUESTION I HAVE IS

THAT AT THE POINT -- AND IN ANSWER TO WHAT JUSTICE QUINCE ASKED.

AT THE POINT WHERE HE HAD OBSERVED WHAT THE OFFICER CONSIDERED TO BE A MARIJUANA CIGARETTE, DID HE SAY STOP, YOU'RE UNDER ARREST, OR WHAT WAS THE -- WHAT DID HE SAY TO THE DEFENDANT?

WHAT DOES THE RECORD SHOW AND WHAT DID THE TRIAL COURT FIND?

>> I BELIEVE IT WAS THAT HE SAID STOP WAS THE TERM THAT HE USED. I DON'T THINK THERE WAS EVER ANY INDICATION THAT HE WAS UNDER ARREST.

>> AND AT THAT POINT HE HAD ALREADY FLICKED THE CIGARETTE.

>> YES.

>> AFTER THEY COME RUNNING INTO THE REC ROOM, APPARENTLY THEY JUST GO THROUGH THE WHOLE HOUSE AND THEY -- IS THAT -- ANYTHING THAT HAPPENS AFTER THEY ARE GOING TO DETAIN HIM OR ARREST HIM, IS THAT RELEVANT AT ALL TO THE ISSUES BEFORE US?

BECAUSE IT WAS SORT OF SHOCKING, FRANKLY, ABOUT WHAT HAPPENED TO THE INHABITANTS IN THE HOUSE AND

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>> WELL, AND REALLY WHERE THIS HAPPENED WAS A GARAGE AND THAT'S THE END OF THE FACTUAL SCENARIO FROM MY POINT OF VIEW.

HE WENT INTO THE GARAGE AND THEY MADE THE ARREST.

>> YOU KEEP USING THE PHRASE GARAGE.

ARE YOU ATTEMPTING TO USE THAT IN SOME WAY TO BOLSTER YOUR ARGUMENT?

BECAUSE THIS IS VERY CLEARLY -- IT HAD A POOL TABLE, IT HAD COUCHES AND IT MAY HAVE HAD A WHEEL OR A GRILL OR SOMETHING, BUT BECAUSE ONE SOCIOECONOMIC POSITION MAY COMBINE, AS IT DOES MANY HOMES IN FLORIDA, THE USE

OF THAT SPACE FOR MULTIPLE PURPOSES, ARE YOU USING THAT -- YOU'VE EMPHASIZED GARAGE MULTIPLE TIMES.

SO I'M TRYING TO UNDERSTAND WHY.

>> JUST FOR PAINTING THE PICTURE, YOUR HONOR.

>> OKAY.

THAT'S FINE.

THAT'S FINE.

NOW, LET ME ASK YOU THIS QUESTION.

WHAT IS IT ABOUT THE, QUOTE, HOT PURSUIT THAT YOU SAY REQUIRES CONSTITUTIONALLY THAT LAW OFFICERS BE ALLOWED TO ENTER WITHOUT A WARRANT?

BECAUSE IF YOU'RE USING GARAGE AS A PART OF THE HOME, WE'RE ENTERING THE HOME.

>> YES.

>> WHAT IS IT ABOUT THE HOT PURSUIT IN THIS CASE THAT CONSTITUTIONALLY ALLOWS THE STATE TO CONCUR?

>> THE ANSWER TO THAT QUESTION IS UNDER HOT PURSUIT AND THE LINE OF CASES OF THE UNITED STATES SUPREME COURT AND IN COMPLIANCE WITH OUR CONSTITUTION'S CONFORMITY CLAUSE, WHAT WE HAVE HERE IS THAT THE FIRST DISTRICT COURT OF APPEALS EXPANDED THE PROTECTION IN ORDER TO GET WITHIN THE GARAGE.

>> BUT ISN'T THAT PART OF -- OR IS IT PART OF THE ANALYSIS WHEN ONE DETERMINES WHETHER THERE IS SUCH A CIRCUMSTANCE THAT WE OUGHT TO ALLOW GOVERNMENT TO ENTER THE HOME OF A FLORIDA CITIZEN?

>> IT IS NOT THE REQUIREMENT, YOUR HONOR.

>> REQUIREMENT.

IS IT ONE OF THE ELEMENTS THAT COURTS SHOULD LOOK TO?

OR IS THIS NO MOMENT WHATSOEVER?

>> IT IS NOT ONE OF THE ELEMENTS

THE COURT SHOULD LOOK TO, AND WE GET THAT FROM SANTANA.

WHAT THE HOLDING WAS WAS THAT A PERSON WHO IS BEING ARRESTED IN A PUBLIC PLACE AND THEY ATTEMPT TO THWART THAT ARREST BY ESCAPING TO A PRIVATE PLACE DOES NOT GET THAT BENEFIT.

>> BUT HERE'S WHY, AGAIN, I ASKED YOU ABOUT DID HE KNOW HE WAS UNDER ARREST.

IF WE PRESUME INNOCENCE AND THAT WE'RE DEALING WITH A MARIJUANA CIGARETTE, WE'RE NOT DEALING WITH SOMEBODY THAT WAS IN THE PROCESS OF SELLING GUNS OR TRADING GUNS OR IN A ROBBERY OR A BURGLARY.

IT SEEMS THAT THIS IDEA THAT THE FOURTH AMENDMENT, WHICH DOES PROTECT THE SANCTITY OF THE HOME, THE QUESTION IS THAT THE SAFETY OF THE POLICE AND COMMUNITY ARE USUALLY WHAT ARE FRONT AND CENTER WHEN WE LOOK AT WARRANTLESS SEARCH AND HERE A WARRANTLESS ARREST.

CERTAINLY IS THERE AN EXCEPTION WHERE BECAUSE YOU'RE ARRESTING FOR A MISDEMEANOR THAT IS NONVIOLENT, THAT YOU CAN GO IN, INTO A HOME AND THEN PROCEED TO DO WHATEVER ELSE THEY DID THERE. AND ISN'T THAT THE BALANCING THAT I THINK THAT THE FIRST DISTRICT WAS LOOKING AT?

AND SO HOW DOES THAT SQUARE WITH WHAT YOU'RE SAYING SANTANA SAYS? >> WELL, THE BALANCING DOESN'T HAVE TO OCCUR WITHIN THE FACTS OF THIS CASE.

IT DOESN'T MATTER THAT THIS WAS A MISDEMEANOR OFFENSE BECAUSE THE ARREST WAS GOING TO BE INITIATED OR COULD HAVE BEEN UNDER PROBABLE CAUSE INITIATED IN PUBLIC.

AND THIS KIND OF GETS INTO THE INTERESTING GRAY AREA WHERE WE ARE, BECAUSE WE KNOW IN PAYTON

WE GOT YOU NEED TO HAVE -- YOU CAN'T DO A WARRANTLESS ARREST IN A HOME.

WE ALSO KNOW FROM WATSON THAT YOU CAN ARREST IN A PUBLIC PLACE WHERE YOU HAVE PROBABLE CAUSE.

>> SO COULDN'T THEY HAVE JUST SAID TO HIM, PLEASE COME OUT, YOU'RE UNDER ARREST FOR POSSESSING A MARIJUANA CIGARETTE?

I MEAN, WOULDN'T THAT BE THE NEXT STEP IN

>> THAT WOULD HAVE BEEN POTENTIALLY A GOOD SCENARIO.

WE WOULD NOT HAVE BEEN HERE HAD THEY DONE THAT.

BUT THEY WERE NOT REQUIRED TO DO THAT.

>> I WANT TO ASK YOU ABOUT THE WHOLE QUESTION OF THE GRAVITY OF THE CRIME THAT HE SUPPOSEDLY COMMITTED.

AND THE COURTS TALK ABOUT THAT. AND GOING INTO SOMEBODY'S HOUSE WITHOUT A WARRANT PRETTY MUCH SAYS YOU BETTER HAVE A GOOD REASON.

AND WHAT THE POLICE ARE SUSPECTING THE PERSON OF BETTER BE SOMETHING GRAVE.

HERE THIS GUY WAS SMOKING A MARIJUANA CIGARETTE.

PERHAPS BACK WHEN I WAS GROWING UP IN THE '70s, THAT MAY HAVE BEEN A CAPITAL OFFENSE.

BUT TODAY IT'S NOT VIEWED IN SUCH A WAY.

AND IT'S LIKE A MISDEMEANOR.

DO YOU THINK THAT THE CRIME THAT WAS SUPPOSED TO BE COMMITTED WAS SUFFICIENTLY GRAVE TO JUSTIFY ENTERING SOMEBODY'S HOME WITHOUT A WARRANT?

>> I DO NOT THINK THAT THIS WAS NECESSARILY A GRAVE CRIME, BUT I DON'T THINK THAT IS PART OF THE ANALYSIS, AND THAT COMES FROM

--

>> WELL, HAVE YOU READ WELSH.

>> YES.
>> THAT'S EXACTLY WHAT WELSH INSTRUCTS.
THE UNITED STATES SUPREME COURT HAS SAID HOME ENTRY SHOULD RARELY BE SANCTIONED WHEN THERE IS PROBABLE CAUSE TO BELIEVE ONLY A MINOR OFFENSE HAS BEEN COMMITTED.
>> THAT WAS NOT ADDRESSING HOT PURSUIT.
IT WAS NOT A HOT PURSUIT CASE. THAT'S WHERE THE PETITIONER'S RELIANCE ON SIMMS COMES IN. THE UNITED STATES SUPREME COURT CLARIFIED.
THEY SAID NOTHING IN THE OPINION ESTABLISHES THAT THE SERIOUSNESS OF THE CRIME IS EQUALLY IMPORTANT IN CASES OF HOT PURSUIT.
>> WHICH CASE ARE YOU READING FROM THERE?
>> STANTON V. STEMS.
>> THAT'S NOT EVEN A CRIMINAL CASE, IS IT?
>> NO.
>> THAT'S A 1983 CASE AND THE STANDARD IS TOTALLY DIFFERENT, ISN'T IT?
>> YES, IT IS.
>> AND SO WE'RE LOOKING TO SEE WHETHER IT IS SO CLEAR THAT THIS OFFICER HAS VIOLATED THE CONSTITUTIONAL RIGHTS OF A CITIZEN TO ALLOW A CIVIL CAUSE OF ACTION.
>> YES.
>> SO IS THERE A CRIMINAL CASE AFTER WELSH THAT USES THE SAME KIND OF LOOSE LANGUAGE THAT YOU'VE JUST --
>> NOT FROM THE UNITED STATES SUPREME COURT.
>> RIGHT.
WELL, THAT'S WHAT WE'RE LOOKING TO SEE, RIGHT?
FOR CONFORMITY CLAUSE.
>> AND JUST GOING BACK TO -- THE FOURTH AMENDMENT -- AND I AGREE,

BECAUSE WE HAVE NO -- THAT OUR STATE CONSTITUTIONAL AMENDMENT MUST BE CONSTRUED IN CONFORMITY. BUT IF I READ ALL OF WELSH AND THE OTHER CASES THAT HAVE BEEN RELIED ON BY THE FIRST DISTRICT AND THE RESPONDENT, IT LOOKS -- WE'RE TALKING ABOUT UNREASONABLE SEARCHES AND SEIZURES AND THE IDEA THAT THE EXCEPTION OF SAYING HOT PURSUIT IS BASED ON THERE BEING EXIGENT CIRCUMSTANCES.

SO HOW IS THAT -- YOU'RE SAYING THE BLANKET RULE IS THAT IF THERE'S GOING TO BE AN ARREST, THAT THERE DOESN'T NEED TO BE A WARRANT FOR THE ARREST. THEY'RE JUSTIFIED IN GOING AFTER THE MISDEMEANOR NO MATTER -- INTO THE HOME.

>> YES, YOUR HONOR.

AND I THINK SANTANA KIND OF HIGHLIGHTS THIS BECAUSE EVEN THE DISSENT IN SANTANA RECOGNIZES THAT THAT ENTIRE OPINION WHERE THEY'RE DISCUSSING THIS ARREST IN A PUBLIC PLACE AND THEN RETREAT TO A PRIVATE PLACE, THEY NEVER ONCE IN THE MAJORITY OPINION MENTIONED EXIGENT CIRCUMSTANCES.

THEY'RE NOT CONSIDERING EVEN THE EXIGENT CIRCUMSTANCES.

WHAT ARE THEY ARE FINDING IS THAT WHEN AN ARREST BEGINS IN PUBLIC AND IT'S A LAWFUL ARREST PURSUANT TO WATSON, WHICH MEANS IT'S A FELONY OR MISDEMEANOR THAT OCCURRED IN THE PRESENCE OF AN OFFICER, THEN THEY ARE JUSTIFIED IN GOING IN --

>> I'M SMILING BECAUSE I'M THINKING ABOUT WHAT WE'VE TRADITIONALLY THOUGHT OF AS HOT PURSUIT OF A FLEEING FELON, THE IDEA THAT SOMEONE'S COMMITTED A CRIME AND NOW THEY'RE OFF AND RUNNING AND THE POLICE ARE PURSUING THEM.

AND NOW WE HAVE THIS SITUATION,
WHERE WE'VE GOT A DEFENDANT WHO
IS EITHER BACKING OR WALKING OR
SOMETHING ABOUT TEN FEET INTO
HIS HOME.

AND I JUST DON'T KNOW HOW YOU
HAVE MADE THAT LEAP THAT THE
EXCEPTION TO THE FOURTH
AMENDMENT THAT TALKS ABOUT HOT
PURSUIT APPLIES IN THIS
SITUATION.

>> BECAUSE EVEN THE DEFINITION
OF HOT PURSUIT FROM SANTANA --
AND I THINK THEY APPLAUDED --
>> DIDN'T SANTANA INVOLVE
FELONS?

>> YES.

>> ISN'T THERE A DIFFERENCE
BETWEEN FELONS AND NONFELONS?

>> NOT FOR PURPOSES OF HOT
PURSUIT, ALTHOUGH THE CASE WAS
DISCUSSING FELONS.

THEY MAKE IT ABUNDANTLY CLEAR
THAT NOTHING IN SANTANA WAS
LIMITED TO FELONIES.
THAT COMES FROM THE ANALYSIS IN
SIMMS.

>> BUT DIDN'T WELSH TALK ABOUT
JAILABLE, NONJAILABLE?

>> YES.

AND I THINK THAT IS A GREAT
POINT, THOUGH.

THAT'S WHY WELSH IS REALLY NOT
ON POINT.

THE ISSUE AS FRAMED IN WELSH WAS
ABOUT WHETHER AND UNDER WHAT
CIRCUMSTANCES THE FOURTH
AMENDMENT PROHIBITS LAW
ENFORCEMENT FROM ENTERING A HOME
FOR A NONJAILABLE OFFENSE.

>> AND LET ME JUST CLARIFY
SOMETHING HERE.

THERE'S NO DISPUTE HERE THAT THE
OFFENSE IN QUESTION WAS A
JAILABLE OFFENSE.

THE

>> YES, YOUR HONOR.

AND SO THAT IS WHY WELSH --
THAT'S THE MAIN REASON WELSH
DOES NOT APPLY.

THAT WAS A NONJAILABLE OFFENSE.
FOOTNOTE 11 SAID BECAUSE WE
REACH THE ISSUE THAT THIS WAS
NOT HOT PURSUIT, WE DON'T HAVE
TO DETERMINE WHETHER OR NOT A
NONJAILABLE OFFENSE HAS A
CATEGORICAL BAN.

THAT'S THE DISTINGUISHING
FACTOR.

WELSH WAS NOT ABOUT HOT PURSUIT.
IT WAS ALSO A NONJAILABLE -- IT
WAS A DUI, BUT BACK IN THE
'70s, DUIS WERE TREATED AT
LEAST IN WISCONSIN AS A
NONJAILABLE ONE.

>> IN STANTON EVEN THOUGH IT WAS
A CIVIL CASE THERE WAS A
REFERENCE TO THE WELSH CASE AND
SAYS THAT WELSH DID NOT RESOLVE
THE ISSUE OF WHETHER OR NOT THE
OFFENSE HAD TO BE JAILABLE OR
NOT?

IS THAT ESSENTIALLY WHICH
STANTON SAYS?

>> THEY SAY WE HAVE NOT
DETERMINED THIS ONE WAY OR THE
OTHER.

I THINK THAT'S SOMETHING THE
SUPREME COURT LIKES TO DO.
IF THEY DON'T HAVE TO REACH THE
ISSUE THEY DON'T NECESSARILY
REACH IT AND IN WELSH THEY DID
NOT HAVE AN ISSUE OF HOT
PURSUIT.

WHEN WE LOOK AT WHAT THE THIRD
DISTRICT HAS DONE HERE, THEY
HAVE INTERPRETED IN SIMILAR
CASES ON MISDEMEANORS, HAVE
SAID, LOOK, SANTANA APPLIES AND
IT SAYS YOU CAN'T AVOID ARREST
BY ESCAPING TO THE EXPEDIENT.
THEY DISTINGUISH WELSH AWAY
BECAUSE THAT WASN'T HOT PURSUIT.

>> LET'S DO THE WHOLE SCENARIO
BECAUSE WE KNOW THAT IF LAW
ENFORCEMENT IS PROPERLY WITHIN
THE HOME, THEY CAN CLEAR THE
AREA FOR OFFICER SAFETY.
SO JUSTICE PARIENTE HAD SORT OF
INDICATED THIS IS PRETTY

REPREHENSIBLE GOING THROUGH THE HOME.

THAT IS ALLOWED IF WE ALLOW LAW ENFORCEMENT TO MAKE THE ENTRY. SO HOW DOES THAT RELATE IN BALANCING THE INTERESTS OF SOCIETY AND THE SANCTITY OF THE HOME IF WE HAVE, FOR EXAMPLE, HE DIDN'T HAVE A MARIJUANA CIGARETTE, BUT HE HAD A PIECE OF GARBAGE AND HE THREW THE TRASH ON THE STREET.

THAT'S A VIOLATION AS WELL. AND THEN WALKED INSIDE. SO UNDER THAT CIRCUMSTANCE THIS CASE, IN YOUR VIEW, WOULD ALLOW POLICE OFFICERS TO ENTER THE HOME OF CITIZENS AND GO THROUGHOUT THE HOUSE ON THROWING A PIECE OF GARBAGE DOWN.

>> IF WE'RE ASSUMING THAT THAT'S A JAILABLE OFFENSE, WE'LL AGREE THAT, YES, THEY COULD GO INTO THE HOUSE.

BUT I THINK SOCIETY'S NOT -- >> ARE WE HERE -- I MEAN, THE WHOLE -- IF WE'RE JUST DEALING WITH ONE MARIJUANA CIGARETTE IN THIS CASE, WE'RE PROBABLY NOT HERE.

IT'S BECAUSE OF THE WEAPON.

>> EXACTLY.

>> THAT'S THE ELEPHANT IN THE ROOM THAT WE'RE DEALING WITH.

>> YES.

>> BUT THERE'S NO HINT THAT THE OFFICER SAW OR WERE AWARE THAT THAT WAS PART OF THE SCENARIO AS THIS WHOLE THING UNFOLDED, RIGHT?

>> YES.

THERE'S NO EVIDENCE TO SUPPORT THAT.

BUT WHERE THE DEFENDANT ATTEMPTS TO RETREAT INTO HIS HOME, I THINK HE LOSES AND SOCIETY WOULD BE WILLING TO RECOGNIZE THAT YOU LOSE THAT REASONABLE EXPECTATION OF PRIVACY WHEN YOU LEAD LAW ENFORCEMENT ON A CHASE INTO YOUR

HOME.

>> BUT I GUESS THE QUESTION THEN WAS -- AND YOU'RE IN YOUR REBUTTAL -- THEY HAD AN OPTION, WHICH WAS THEY COULD SECURE THE HOME AND OBTAIN A WARRANT. AND ALL WE'RE REALLY JUST TALKING ABOUT EXCEPTIONS TO THE FOURTH AMENDMENT HAVING TO BE JUSTIFIED BY THE STATE AND FOR ALL THE REASONS I THINK IN THE BALANCING, IT SEEMS LIKE IN THIS CASE THE STATE REALLY HASN'T REALLY SHOWN THAT THE BALANCE IS IN FAVOR OF THE STATE'S INTEREST IN SECURING ARREST VERSUS THE DEFENDANT'S -- I MEAN, BUT ISN'T THAT THE QUESTION, IS WHO HAS THE BURDEN TO PROVE THAT THIS WAS A REASONABLE SEIZURE?

>> YES.

AND IN A CASE OF HOT PURSUIT UNDER SANTANA, WHEN YOU RETREAT INTO YOUR HOUSE AND YOU'RE TRYING TO AVOID THE PUBLIC ARREST, THEN YOU DON'T GET THAT PROTECTION.

AND THIS IS ONE OF THOSE NARROW CIRCUMSTANCES WHERE YOU CAN FIND EXIGENT CIRCUMSTANCES.

AND I'LL RESERVE --

>> YOU'RE DEEP INTO YOUR REBUTTAL.

I'LL GIVE YOU AN EXTRA MINUTE SINCE WE HELPED YOU.

>> THANK YOU, YOUR HONOR.

>> THANK YOU.

>> GOOD MORNING, JUSTICES. MATHEW KACHERGUS ON BEHALF OF CHRISTOPHER MARCUS.

SEATED AT COUNSEL TABLE IS ELIZABETH WHITE.

AND MAY IT PLEASE THE COURT.

I WANT TO RETURN TO JUSTICE PARIENTE'S QUESTION ABOUT WHETHER THERE WAS PROBABLE CAUSE IN THIS INSTANCE OR NOT, BECAUSE THAT WAS NEVER ESTABLISHED AT ANY LEVEL, AND I SUBMIT TO THIS COURT THAT THERE WAS NOT

PROBABLE CAUSE.
WHEN YOU LOOK BACK TO THE RECORD
AND THE TRANSCRIPT OF THE
SUPPRESSION HEARING, THE OFFICER
THAT WAS INVOLVED TESTIFIED THAT
HE SAW MR. MARCUS SMOKING WHAT
APPEARED TO BE A CIGARETTE,
EXHALE AND SMELLED MARIJUANA.
MR. MARCUS FLICKS THE CIGARETTE
UNDER THE CAR IN THE DRIVEWAY.
BUT IN THE SAME TRANSCRIPT IT'S
ALSO POINTED OUT THAT THIS WAS A
FRIDAY OR SATURDAY NIGHT IN THE
CITY OF JACKSONVILLE BEACH AND
IT WAS NOT UNCOMMON TO SMELL
MARIJUANA IN THE AIR ON THOSE
EVENINGS IN THOSE CIRCUMSTANCES.
THERE WAS NOT PROBABLE CAUSE.
THEY DIDN'T HAVE ANY CONTRABAND
IN THEIR POSSESSION SO I CAN'T
ENVISION MR. MARCUS BEING
PROSECUTED AT THAT POINT IN TIME
WITHOUT HAVING MARIJUANA IN HAND
AND HE JUST SMELLED MARIJUANA,
WHICH HE READILY ADMITTED WAS
COMMON TO SMELL IN THAT AREA
UNDER THOSE -- AT THAT TIME OF
THE EVENING ON THOSE DATES.
>> DID THE OFFICER -- WAS THERE
TESTIMONY -- DID HE ACTUALLY
OBSERVE YOUR CLIENT TOSS THE
CIGARETTE?
>> YES, SIR.
>> DID THE OFFICER TESTIFY THAT
HE WAS ABLE TO SEE WHERE THE
CIGARETTE LANDED?
>> NO.
HE STATED THAT AFTER THE EVENTS
IN THE HOME OCCURRED, HE WENT
BACK LATER AND WAS ABLE TO
RECOVER THAT --
>> WERE THERE ANY OTHER ROACHES
THERE?
>> NO.
>> ANY OTHER CIGARETTES?
>> NO.
>> ALL RIGHT.
LET ME ASK YOU THIS.
>> AT LEAST THAT HE TESTIFIED.
>> I'M CURIOUS ABOUT THE WHOLE

DYNAMICS OF THIS GARAGE,
WHATEVER YOU WANT TO CALL IT.

>> YES, SIR.

>> FOR PURPOSES OF THE FOURTH
AMENDMENT AND THE ARGUMENT HERE
TODAY AS FAR AS HAVING A
WARRANTLESS SEARCH OF A
RESIDENCE, DOES IT MAKE ANY
DIFFERENCE WHETHER IT IS A
GARAGE THAT JUST HOUSED THE CARS
AND THE MOTORCYCLES OR PERHAPS
ONE THAT DEALS WITH PEOPLE
CONVERT THEIR GARAGE INTO JUST A
FAMILY ROOM-- IN VIOLATION OF
CODE, PROBABLY, BUT PEOPLE DO
THAT.

DOES IT MAKE ANY DIFFERENCE
WHETHER IT'S JUST CARS OR
WHETHER YOU HAVE A POOL TABLE
AND A TELEVISION SET?

>> I DON'T BELIEVE IT DOES,
PARTICULARLY WHEN IT'S AN
ATTACHED GARAGE.

IN OUR BRIEF WE CITED A CASE
FROM THE 11TH CIRCUIT THAT
RELATED TO OFFICERS ATTEMPTING
TO SERVE A DOMESTIC VIOLENCE
INJUNCTION ON SOMEBODY AND
THEY'RE IN THE GARAGE AND THE
GARAGE CLOSES.

THEY FOUND THE FACT THAT IT WAS
AN ATTACHED GARAGE CLOSELY
ASSOCIATED WITH THE HOME
WARRANTED FOURTH AMENDMENT
PROTECTION, SEEMING TO
DISTINGUISH AN UNATTACHED
GARAGE.

IN THIS CASE THE ARGUMENT THAT
IT WARRANT FOURTH AMENDMENT
PROTECTION IS HEIGHTENED BY THE
FACT THAT YOU HAVE TWO COUCHES,
A POOL TABLE.

>> YEAH.

BUT YOU ALSO HAVE A MOTORCYCLE,
YOU HAVE BBQs, YOU HAVE YOUR
TYPICAL GARAGE STUFF IN THERE,
TOO.

>> AND A COFFEE TABLE.

AND YOU HAVE PEOPLE LOUNGING
AROUND, JUST AS IF IT WAS A

LIVING ROOM OR A DEN.
AND GIVEN THE SITUATION OF THIS PARTICULAR RESIDENCE, IT WAS A TOWNHOUSE, WHERE IT'S SURROUNDED ON ALL SIDES, INCLUDING ON TOP, BY THE RESIDENCE ITSELF.
IT IS INDISTINGUISHABLE FROM ANY OTHER PART OF THE RESIDENCE BUT FOR IT'S GOT A GARAGE DOOR.

>> GOING BACK TO THE ISSUE OF WHETHER THERE WAS PROBABLE CAUSE FOR THE ARREST, IF THAT'S DISPUTED, THEN DOES THAT CHANGE THE WHOLE PARADIGM OF HOW WE LOOK AT THIS CASE?

BECAUSE THEN WE'RE NOT TALKING ABOUT SOMEONE FLEEING ARREST. WE'RE JUST TALKING ABOUT THEM FLEEING QUESTIONING.

>> A TERRY STOP.

>> IT'S A TERRY STOP, WHICH THEN -- BUT IS THAT -- OKAY.

SO LET'S GO TO THIS, BECAUSE IF YOU'RE CORRECT THAT THERE'S NOT -- THERE'S A QUESTION OF PROBABLE CAUSE THAT MAY LEAD US TO A DIFFERENT CONCLUSION, DID THE FIRST DISTRICT ASSUME THERE WAS PROBABLE CAUSE FOR THE ARREST?

>> IT WOULD APPEAR READING THE DECISION WITHOUT STATING THAT THAT WAS --

>> SO I THINK LET'S GO WITH LET'S ASSUME THERE'S PROBABLE CAUSE.

NOW, I GO BACK AND FORTH HERE BECAUSE YOU'VE GOT THE ONE ISSUE OF THERE IS THE SANCTITY OF THE HOME AND THEN AGAIN THE IDEA THAT THERE'S THE SEARCH OR THE ARREST IS MUCH MORE THAN JUST GETTING MR. MARCUS TO COME BACK OUT.

BUT, ON THE OTHER HAND, THERE'S THE IDEA THAT, HEY, TAG, YOU'RE IT OR HOME BASE AND YOU GET TO GO INTO -- YOU KNOW, YOU FLEE INTO YOUR HOME AND NOW YOU ARE IMMUNE FROM BEING ARRESTED.

HOW DO WE BALANCE -- HOW DO YOU SEE THAT AS BEING WHAT RULE COMES OUT OF THIS CASE IF WE SAY, LOOK, IF THERE'S PROBABLE CAUSE FOR THE ARREST OF THIS NONVIOLENT MISDEMEANOR, BUT YOU CAN'T JUST -- THE FLEEING FELON RULE OR THE FLEEING SUSPECT RULE TRUMPS THAT.

>> WHAT ARE WE ADVANCING AS THE LEGAL RULE IN THIS CASE?

>> CORRECT.

>> I THINK THE FIRST DISTRICT GOT IT RIGHT.

AND IF WE GO BACK AND LOOK AT THIS FOURTH AMENDMENT JURISPRUDENCE, THE HOME IS ONE'S CASTLE AND THAT IT REQUIRES A WARRANT TO ENTER THE HOME UNLESS THERE ARE CLEARLY-DELINEATED EXCEPTIONS TO THE WARRANT RULE, SUCH AS EXIGENT CIRCUMSTANCES. SUBSUMED WITHIN THAT IS HOT PURSUIT.

BUT AS THIS COURT HAS PREVIOUSLY STATED IN RIGS, WHEN YOU'RE ANALYZING THE CONDUCT OF A LAW ENFORCEMENT OFFICER CARRYING OUT A WARRANTLESS ENTRY INTO A HOME, YOU EXAMINE THE TOTALITY OF THE CIRCUMSTANCES.

AND THAT'S WHAT THE FIRST DISTRICT DID IN THIS CASE.

>> IN THIS CASE, THOUGH, UNDER THAT ANALYSIS, THIS DEFENDANT -- THE OFFICER OBSERVED THE DEFENDANT SMOKING.

THE DEFENDANT THEN EXHALES IT AND HE SMELLS THE ODOR OF MARIJUANA AND HE THROWS IT AWAY. OKAY.

AND THAT'S BASICALLY THE FACT OF THIS CASE.

AND THEN HE FLEES IN SOME MANNER TO THE GARAGE.

IF IN THE COURSE OF HIM FLEEING INTO THE GARAGE HE HAD CLOSED -- I ASSUME THE GARAGE DOOR WAS ALREADY OPEN.

>> THAT'S CORRECT.

>> AND STAYED HOME.
>> THAT'S CORRECT.
>> IF HE HAD CLOSED THE GARAGE DOOR, WOULD THAT -- WOULD THE OFFICERS HAVE BEEN ABLE TO PURSUE HIM OR NOT?
I MEAN, DOES IT MAKE ANY DIFFERENCE?
IF HE HAD ATTEMPTED TO SECRET HIMSELF BY CLOSING THE GARAGE.
>> ACCORDING TO THE STATE IT WOULD BE OF NO MOMENT BECAUSE THEY'RE ALLOWED TO ENTER THE HOME.
THEY COULD SLEDGE HAMMER, BUST THE FRONT DOOR OPEN.
SO UNDER THE STATE'S THEORY, IT'S OF NO MOMENT.
TO US, IT IS OF NO MOMENT BUT FOR A DIFFERENT CIRCUMSTANCE.
IT IS WITHIN THE SANCTITY OF THE HOME.
>> SO EVERY TIME YOU HAVE A FLEEING SUSPECT, THE POLICE WOULD THEN HAVE TO JUST SAY, OKAY, LET ME CALL UP, SEE IF I CAN GET SOMEONE TO ISSUE ME A SEARCH WARRANT AND WAIT THERE UNTIL THE SEARCH WARRANT GETS ISSUED.
>> WELL, IN THIS FACTUAL CIRCUMSTANCE THERE WAS A NUMBER OF THINGS THAT COULD HAVE HAPPENED.
YOU HAD A NUMBER OF OCCUPANTS IN THE GARAGE.
THEY COULD HAVE SAID, WHO LIVES HERE?
CAN I COME IN TO GET HIM?
THEY COULD HAVE GOTTEN CONSENT.
AND AS THE SUPREME COURT HAS RECENTLY SET FORTH IN ITS CASE OF MISSOURI V. MCNEILLY, WHAT WAS ONCE PERCEIVED AS THE ADMINISTRATIVE INCONVENIENCE OF GETTING A WARRANT IS GREATLY DIMINISHED IN THIS AGE OF TECHNOLOGY, WHERE YOU CAN GET ONE RATHER QUICKLY.
>> LET ME ASK YOU A QUESTION

ABOUT THE PHYSICAL CIRCUMSTANCE
HERE.

WAS THERE NO DOOR AT THE BACK OF
THE GARAGE?

>> THE RECORD IS UNCLEAR ON
THAT.

WE KNOW THERE'S A DOOR LEADING
INTO THE HOUSE.

PRESUMABLY THERE'S A DOOR IN THE
HOUSE SOMEWHERE IN THE BACK.

>> THE SCENARIO IS THEY JUST
STAND OUTSIDE AND SAY MAY WE
COME AND GET HIM, HE'S GETTING
AWAY.

>> HE'S SEATED ON A COUCH.

>> BUT HE'S IN A POSITION TO GET
AWAY.

>> BUT --

>> HOW MANY OFFICERS WERE THERE?

>> WELL, THAT'S ALSO UNCLEAR.

WE KNOW THERE WERE AT LEAST
THREE IN THE GARAGE WITH A
NUMBER OF OTHER UNITS
RESPONDING.

THE TOTAL NUMBER IS UNCLEAR.

>> I HAVEN'T BEEN ON A LOT OF
CALLS, BUT I WATCH TELEVISION
AND I SEE THEY ALWAYS SAY GO
BACK TO -- THEY MIGHT EXIT, SO
SOMEBODY HELPS DECIDE WHERE THEY
MIGHT EXIT.

IT'S MY UNDERSTANDING THIS WAS A
WIDE OPEN GARAGE.

>> YES, SIR.

>> THE GUY WAS SITTING ON THE
CHAIR.

SO HE -- IF THEY THOUGHT HE WAS
GOING TO RUN, THEN THEY COULD
HAVE DONE SOME ACTION TO KEEP
HIM FROM RUNNING.

>> I BELIEVE --

>> HOW DID THIS SQUARE WITH ANY
OF THE EXCEPTIONS THAT THEY TALK
ABOUT IN WELSH?

>> WELL, IN WELSH THEY TALK
ABOUT EXIGENT CIRCUMSTANCES.

>> CORRECT.

>> AND THE ONE THAT WAS
ADVOCATED BY THE STATE OF
WISCONSIN IN WELSH WAS THE

DESTRUCTION OF EVIDENCE.
>> WASN'T EVIDENCE OUTSIDE?
>> WELL, THE EVIDENCE WAS IN THE GENTLEMAN'S BODY.
IT WAS HIS BLOOD.
>> NO.
I'M TALKING IN THIS CASE.
>> OH.
THE MARIJUANA?
YES.
IT'S LAYING IN THE DRIVEWAY.
SO THERE WAS NO -- THAT'S MY POINT.
THE FIRST DISTRICT GOT IT RIGHT.
>> CAN I ASK A QUESTION ABOUT SANTANA?
DOES SANTANA INVOLVE ANY ANALYSIS OF EXIGENT CIRCUMSTANCES?
>> CERTAINLY.
CERTAINLY.
>> WHAT DO THEY SAY ABOUT EXIGENT CIRCUMSTANCES?
>> THERE'S A TRANSACTION WHERE THE PERSON THAT'S DEALING WITH --
>> DO THEY TALK ABOUT EXIGENT CIRCUMSTANCES?
>> DESTRUCTION OF EVIDENCE, YES, SIR.
>> BUT THEY TALK ABOUT IT IN TERMS OF EXIGENT CIRCUMSTANCES.
>> YES, THE DESTRUCTION OF EVIDENCE.
HOT PURSUIT IS THE --
>> DO THEY USE THE WORD EXIGENT?
>> I'D HAVE TO LOOK IN THE OPINION, BUT THEY TALK ABOUT EXIGENT IN TERMS OF THE HOT PURSUIT AND THE EXIGENCY OF THE DESTRUCTION OF EVIDENCE.
>> BUT ISN'T THE ULTIMATE HOLDING IN THAT CASE THIS, A SUSPECT MAY NOT DEFEAT AN ARREST WHICH SET IN MOTION IN A PUBLIC PLACE BY THE EXPEDIENT OF ESCAPING TO A PRIVATE PLACE. THAT'S THE HOLDING, CORRECT?
YOU CAN ARGUE ABOUT WHETHER THAT EXTENDS TO FACTS OTHER THAN THE

FELONY THAT WAS INVOLVED THERE.
SO I UNDERSTAND THAT.
BUT THE CORE HOLDING HAS TO DO
WITH THE ARREST HAVING BEEN SET
IN MOTION AND SOMEONE ATTEMPTING
TO EVADE THE ARREST BY GOING
INTO A PRIVATE PLACE.
NOW, LET ME ASK YOU THIS, JUST
IN TERMS OF THE BROADWAY THIS
WOULD WORK.

ISN'T IT SOMEWHAT PROBLEMATIC
FOR THE POLICE TO BE IN A
SITUATION WHERE THEY HAVE THE
AUTHORITY TO LAWFULLY DETAIN
SOMEONE, TO ARREST SOMEONE, AND
THEN JUST HAVE TO STOP WHEN THAT
-- IF THE RULE IS THAT A PERSON
FLEEING, AT LEAST IN SOME
CIRCUMSTANCES, IF IT'S A
MISDEMEANOR, AS IT IS HERE, IF
THE FIRST DISTRICT IS CORRECT,
THAT FLEEING IN THOSE
CIRCUMSTANCES ALL THE PERSON HAS
TO DO TO ENHANCE THE ABILITY TO
EVADE PROSECUTION AND TO GET
AWAY FROM THE POLICE IS TO GET
INTO A PRIVATE PLACE, NOT EVEN
NECESSARILY THE PERSON'S OWN
HOME, BUT ANY DWELLING.

IF THEY GO INTO A DWELLING, THEN
THE POLICE ARE GOING TO HAVE TO
STOP AT THE OUTSIDE -- IF THEY
JUMP OVER A FENCE, THEY GOT TO
STOP OUTSIDE THE FENCE, THEY GOT
TO STOP AT THE DOOR AND THEN
THEY'VE GOT TO TRY TO GO BACK TO
INTERCEPT THEM IN SOME OTHER
PUBLIC PLACE.

ISN'T THAT SOMEWHAT PROBLEMATIC
WHEN THE POLICE HAVE THE
AUTHORITY TO STOP SOMEONE AND IF
THE FIRST DCA OPINION PREVAILS,
THEN THE RULE IS GOING TO BE AT
LEAST SOME OF THE TIME YOU CAN
RUN AND IF YOU CAN GET INTO A
DWELLING PLACE, YOU CAN -- THE
POLICE CANNOT FOLLOW YOU IN
THERE TO EFFECTUATE THE ARREST.
>> IS THAT PROBLEMATIC FOR
POLICE.

>> YEAH.

ISN'T THAT PROBLEMATIC?

>> I THINK THE FOURTH AMENDMENT AND THE JURISPRUDENCE EMANATING THEREFROM IS PROBLEMATIC FOR POLICE AND THEY OUGHT TO RECOGNIZE THAT WHEN YOU'RE ENTERING THE THRESHOLD OF A HOME, THE RULES CHANGE A LITTLE BIT, THAT YOU NEED TO EVALUATE WHAT ARE THE CIRCUMSTANCES PRESENT THAT AUTHORIZE MY ENTRY INTO THIS HOME.

GOING BACK TO JUSTICE QUINCE'S QUESTION, OR THE CORRECT RULE OF THE LAW, IT'S THE TOTALITY OF THE CIRCUMSTANCES.

IF THEY'RE JUST MERELY GIVING THE INCANTATION I'M IN HOT PURSUIT WITHOUT ANY ANALYSIS OF WHAT THE ATTENDANT CIRCUMSTANCES ARE, THAT'S INSUFFICIENT UNDER FOURTH AMENDMENT JURISPRUDENCE TO AUTHORIZE THE ENTRY TO THE HOME.

>> WELL, THAT'S EXACTLY WHAT YOUR OPPOSITION HAS SAID, IS THAT THE HOT PURSUIT YOU NEED NOT WORRY ABOUT WHAT IS THE BASIS FOR THE HOT PURSUIT. YOU NEED NOT WORRY ABOUT WHETHER THERE'S DESTRUCTION OF EVIDENCE. ONCE THAT PROCESS IS SET IN MOTION, HOT PURSUIT DOESN'T INCLUDE THOSE THINGS. WE DON'T LOOK TO THOSE. THOSE ELEMENTS DON'T MATTER. AND IF YOU DISAGREE, WHY DO YOU DISAGREE AND WHAT'S THE AUTHORITY?

>> THE AUTHORITY IS WISCONSIN V. WELSH, THIS COURT'S ANNOUNCEMENT IN RIGS.

YOU HAVE TO LOOK AT THE EXIGENT CIRCUMSTANCES.

WHAT ALLOWS THEM TO ENTER THE HOME WITHOUT A WARRANT?

IS SOMEBODY IN HARM'S WAY?

IS THERE EVIDENCE THAT IS LIKELY TO BE DESTROYED THAT WOULD

PREVENT THE APPREHENSION AND PROSECUTION OF THIS CRIME? IN MR. MARCUS' CASE, NONE OF THAT IS PRESENT.

>> I GUESS IT SEEMS TO ME THAT WHAT YOU'RE SAYING IS THAT UNDER THESE KINDS OF CIRCUMSTANCES, AS SOON AS YOU GET INTO THE HOME, THE POLICE ARE GOING TO HAVE TO DO -- GET THE WARRANT TO KEEP HIM FROM ESCAPING.

THEY'RE GOING TO HAVE TO HAVE SOMEBODY STAY THERE AT THE BACK DOOR.

>> SET UP A PERIMETER.

>> HE COULD GET OUT.

SO THEY'VE GOT TO CLOSE FOR THIS -- ANY KIND OF OFFENSE.

IS THAT WHAT YOU'RE SAYING?

>> IF THAT'S WHAT THEY ELECT TO DO.

BUT IT'S A ROUTINE LAW ENFORCEMENT FUNCTION.

>> LET'S JUST MAKE SURE WE UNDERSTAND SOMETHING.

YOU'RE SAYING THAT HOT PURSUIT -- I THINK THE DISAGREEMENT IS THAT HOT PURSUIT ACTUALLY DOESN'T MEAN THAT ANYTIME YOU THINK YOU CAN ARREST SOMEBODY, WHETHER IT'S A MISDEMEANOR OR A FELONY, THAT YOU CAN ENTER INTO THE HOME.

>> FELONIES ARE DIFFERENT.

THE LEGISLATURE HAS CATEGORIZED THEM AS DIFFERENT.

THOSE ARE SERIOUS CRIMES AND WELSH DIRECTS THAT THAT IS AN EXIGENT CIRCUMSTANCE FOR A FELONY.

THEY COULD ENTER THE HOME.

>> SO NOW WE'RE BACK TO THE QUESTION.

WE'RE REQUIRED TO CONSTRUE OUR JURISPRUDENCE IN A CONFORMITY WITH THE U.S. SUPREME COURT.

SO NOW WE GO BACK TO THE WHETHER THE U.S. SUPREME COURT HAS SPECIFICALLY HELD THAT HOT PURSUIT IS A BLANKET EXCEPTION

NO MATTER WHAT THE NATURE OF THE UNDERLYING ARREST WOULD BE.

>> THEY HAVE NOT.

AND WHEN -- IT'S TELLING WHEN

--

>> BUT DO YOU AGREE --

>> THE CONFORMITY CLAUSE WOULD REQUIRE THIS COURT TO ADOPT WHATEVER THE SUPREME COURT FOUND BINDING.

>> AND I DO WANT TO MAKE SURE, WE'RE NOT TALKING HERE ABOUT A SEARCH WARRANT, BECAUSE I THINK THERE WAS A QUESTION ABOUT, WELL, DO THEY HAVE TO WAIT TO GET A SEARCH WARRANT.

THIS WOULD BE AN ARREST WARRANT.

>> WELL, THAT'S AN INTERESTING QUESTION.

>> WHAT WAS THE WARRANT THEY NEEDED TO GET?

>> PRESUMABLY THEY DIDN'T HAVE HIS IDENTITY, THEY WOULD NEED A SEARCH WARRANT.

THEY COULD GET AN ARREST WARRANT, BUT IT WOULD BE VERY NONDESCRIPTIVE.

>> IS THERE ANOTHER CONCERN ABOUT POLICE ENTERING HOMES ON A PRETEXT OF THERE BEING A MINOR MISDEMEANOR.

YOU SAY THIS IS JACKSONVILLE BEACH ON A SATURDAY NIGHT.

NOW, I DON'T KNOW THE COLOR OF THE DEFENDANT OR HIS COHORTS AND FINDING AN EXCUSE TO ACTUALLY ENTER A HOME.

IS THAT A CONCERN THAT WE SHOULD HAVE?

>> THE CONCERN I AS A CITIZEN OF FLORIDA HAS BECAUSE ANYTIME AN OFFICER ARTICULATES THAT HE WAS IN HOT PURSUIT OF ANY OFFENSE, IT NOW ALLOWS HIM AUTHORITY, IF THE COURT WAS TO ADOPT THE STATE'S ARGUMENT, TO GO INTO THE HOUSE NO MATTER WHAT THE OFFENSE WAS, NO MATTER WHAT THE ATTENDANT CIRCUMSTANCES WERE. AS WE POINTED OUT IN OUR BRIEF,

UNDER THE ORDINANCE CODE, ALL ORDINANCE VIOLATIONS ARE SUBJECT TO A 90-DAY JAIL SENTENCE.

>> BUT YOU DON'T HAVE TO GO THAT FAR.

EVEN IF YOU DECIDE IN A CASE LIKE THIS THAT HOT PURSUIT WAS APPLICABLE, WE DO KNOW THAT THIS WAS A MISDEMEANOR OFFENSE THAT WAS A JAILABLE OFFENSE.

I DOUBT THAT SPITTING ON THE SIDEWALK -- AND MAYBE I'M WRONG AND IT IS, BUT I DOUBT THAT SPITTING ON THE SIDEWALK OR SOME OTHER OFFENSE LIKE THAT, EVEN THE GARBAGE THROWING, WOULD BE A JAILABLE OFFENSE, WOULD IT?

>> UNDER THE CITY OF JACKSONVILLE BEACH ORDINANCE CODE, IT IS A JAILABLE OFFENSE, 90 DAYS.

>> WHAT IF THE POLICE OFFICER HAD SAID INSTEAD OF STOP, HE HAD SAID YOU'RE UNDER ARREST, STOP. CAN THE POLICE OFFICER FOLLOW HIM IN THEN UNDER THOSE CONDITIONS?

>> UNDER -- I DON'T THINK IT CHANGES THE ANALYSIS. THE ANALYSIS IS WHETHER IT'S AN EXIGENT CIRCUMSTANCE. AND THERE WAS NO DANGER TO ANY PERSONS, PROPERTY OR POLICE BY MR. MARCUS ENTERING THE HOME. THERE WAS NO CONTENTION OF ANYONE BEING IN HARM'S WAY. THERE WAS ABSOLUTELY NO CONTENTION OF ANY DESTRUCTION OF EVIDENCE.

SO WE GO BACK TO THE PROPOSITION OF WELSH V. WISCONSIN, THAT IN THAT CASE IT WAS A NONJAILABLE OFFENSE, BUT THEY DIDN'T LIMIT IT SOLELY TO NONJAILABLE OFFENSES.

THEY USED THIS AMORPHOUS LANGUAGE, MINOR OFFENSE, WHICH WE'RE NOW ALL WRESTLING WITH WHAT DOES THAT MEAN.

BUT BACK TO YOUR QUESTION.

I DON'T THINK THE FACT THAT HE WOULD HAVE ANNOUNCED YOU'RE UNDER ARREST CHANGES THE ANALYSIS.

IT'S WHETHER THERE WAS AN EXIGENT CIRCUMSTANCE THAT AUTHORIZED THAT LAW ENFORCEMENT OFFICER TO CROSS THE THRESHOLD OF THAT HOME WITHOUT A WARRANT. AND THE MERE INCANTATION OF HOT PURSUIT IS INSUFFICIENT. IS IT SOMETHING TO BE CONSIDERED IN THE TOTALITY OF CIRCUMSTANCES?

CERTAINLY.

BUT WHEN YOU ANALYZE THE TOTALITY OF CIRCUMSTANCES, WITH NO DANGER TO ANYONE, NO DESTRUCTION OF EVIDENCE, ABSOLUTELY NO EXIGENT CIRCUMSTANCE WHATSOEVER THAT WOULD WARRANT THE NEED TO FOREGO A WARRANT, HE HAD THE TIME AVAILABLE, THE ABILITY, THE BACKUP OFFICERS.

THERE WAS NO REASON NOT TO GET A WARRANT OR AT LEAST TRY TO GET CONSENT FROM ONE OF THE OCCUPANTS.

NONE OF THAT HAPPENED.

AND SO A LONG-WINDED ANSWER, NO, I DON'T THINK THAT CHANGES THE ANALYSIS.

AND IF THERE'S NO FURTHER QUESTIONS, THAT'S THE RESPONDENT'S POSITION IN THIS CASE.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, JUSTICE QUINCE, I THINK YOU HIT THE NAIL ON THE HEAD WITH THE DISTINGUISHING FACTORS HERE OF JAILABLE VERSUS NONJAILABLE. THAT'S WHY WELSH DOESN'T APPLY. CLEARLY MINOR OFFENSES UNDER WELSH WAS A NONJAILABLE CIVIL INFRACTION.

JUSTICE CANADY, YOU HIT THE NAIL ON THE HEAD WITH THE POLICY ARGUMENT HERE.

WE CAN'T HAVE CRIMINALS TRYING TO RUN INTO RANDOM HOUSES TO GET THE HOME BASE SAFE.

>> IT HAS NO MEANING AT ALL IF -- THE GRAVITY OF THE EVIL THEY'RE TRYING TO STOP HAS TO HAVE SOME IMPLICATION IN ENTERING THE HOUSE UNDER THE TOTALITY OF THE CIRCUMSTANCES. THERE WAS NOT -- I MEAN, I DON'T SEE IT FITTING UNDER ANY OF THE EXCEPTIONS UNDER WELSH.

>> WE KNOW YOU CAN GO INTO THE HOUSE WHEN THERE ARE EXIGENT CIRCUMSTANCES.

>> WHERE IS THE EXIGENT CIRCUMSTANCE HERE?

>> WHEN THE ARREST HAS BEGUN IN A PUBLIC PLACE, WHEN WE HAVE A VALID ARREST.

>> BUT, NOW, SANTANA DEALT WITH FELONIES, RIGHT?

>> YES.

>> CLEARLY FELONIES, THAT WOULD BE AN EXCEPTION.

>> ABSOLUTELY.

>> BUT HOW DOES YOUR POSITION SQUARE WITH THE SUPREME COURT SAYING THAT WARRANTLESS SEARCHES OR ENTRANCES FOR MISDEMEANORS SHOULD BE RARE?

THIS WOULD BE AN EVERYDAY THING, WOULD IT NOT?

>> NO, NOT NECESSARILY.

I THINK THIS IS ACTUALLY ONE OF THE RARE SITUATIONS WHERE SOMEBODY IS ABLE TO BEAT POLICE TO THEIR HOME BEFORE THEY CAN MAKE THEIR ARREST.

>> BUT HE'S RIGHT THERE IN THE OFFICER'S PLAIN SIGHT.

HE'S NOT MOVING.

THE TOTALITY OF THE CIRCUMSTANCES HAS TO MEAN SOMETHING OR ELSE THIS IS A NULLITY.

>> IT ABSOLUTELY DOES.

AND PART OF THOSE CIRCUMSTANCES IS YOU CANNOT THWART AN ARREST BEGUN IN PUBLIC BY SIMPLY

ESCAPING TO YOUR HOME.
REREAD THE CASE FROM THE THIRD
AND WILLIAMS FROM THE THIRD
BECAUSE YOU'LL SEE ANALYSIS AND
CONFORMITY WITH THE UNITED
STATES INTERPRETATION.

>> I THINK WE HAVE THEN NOT HOT
PURSUIT.

THEN THE EXCEPTION IS THAT YOU
CAN ENTER THE HOME IF YOU ARE
GOING TO ARREST SOMEONE FOR A
MISDEMEANOR.

THEN THERE'S NO -- THAT'S THE
PRONOUNCEMENT YOU'RE ASKING US
TO MAKE.

THERE'S NO SUCH THING -- IT'S
NOT EXIGENT OR HOT PURSUIT.
IT'S MAKING AN ARREST FOR A
MISDEMEANOR IS WHAT THE YOU CAN
GO INTO A PERSON'S HOME WITHOUT
A WARRANT.

>> WHEN THE CIRCUMSTANCES OCCUR
WITHIN THE OFFICER'S PRESENCE.
AND FOR THESE REASONS THIS COURT
SHOULD --

>> BUT YOU'RE ARGUING THAT ONLY
APPLIES WHERE THERE'S HOT
PURSUIT.

>> YES.

>> THIS IS NOT ABOUT ARREST
UNLESS THERE'S HOT PURSUIT.

>> SORRY.

YES.

EXACTLY.

AND THAT IS ALSO PURSUANT TO
901.15 WHICH ALLOWS FOR
MISDEMEANOR ARREST TO OCCUR IN
THE PRESENTED AND IT SHOULD BE
MADE IMMEDIATELY OR WHILE IN
FRESH PURSUIT.

FOR THESE REASONS THE COURT
SHOULD REVERSE.

>> THANK YOU FOR YOUR ARGUMENTS.
TEACHERS, WILL YOU PLEASE WAIT
IN THE COURTROOM FOR THE
JUSTICES TO COME BACK OUT FOR AN
OFFICIAL PHOTOGRAPH WITH THE
COURT?

SO WE'LL BE RIGHT BACK.

THANK YOU FOR YOUR ARGUMENTS.

>> ALL RISE.